IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 32678 of 2005(M)

PETITIONER:

V. SAROJINI, W/O. LATE N.KUTTY,
KAKKANTTAYATHU HOUSE, NAMBARUVIKALA,
ALUMKADAVU P.O., KARUNAGAPPALLY,(VIA) KOLLAM.

BY ADV. SRI.N.DHARMADAN (SR.)
SRI.M.R.SABU

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SPECIAL SECRETARY TO THE
GOVERNMENT OF KERALA, GENERAL ADMINISTRATION
(FFP B) DEPARTMENT, SECRETARIAT,THIRUVANANTHAPURAM

2. DISTRICT COLLECTOR, KOLLAM,
CHAIRMAN OF THE ADVISORY COMMITTEE FOR FREEDOM
FIGHTERS, OFFICE OF THE COLLECTORATE, KOLLAM.

3. THE TAHSILDAR,
KARUNAGAPPALLY, KOLLAM DIST.

BY GOVERNMENT PLEADER SRI. V.T.K.MOHANAN
ADV. SRI.P.PARAMESWARAN NAIR,ASST SG

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 32678/2005

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE JUDGMENT IN OP NO. 11264/03 DT. 18/5/05 OF THIS COURT.

EXT.P2. COPY OF THE GOVT. ORDER NO. 49673/FEP B3/2005/GAD DT.12/7/05 BY GOVT.

EXT.P3. COPY OF THE GO NO. N2/19/01 DT. 13/7/05 BY R2.

EXT.P4. COPY OF THE APPLICATION DT. 28/12/00 BY THE PETITIONER.

EXT.P5. COPY OF THE ORDER NO. 43948/FFP B3/202/GAD DT. 18/7/02 BY GOVT.

EXT.P6. COPY OF THE ORDER NO. N2/19/01 DT. 20/11/02 BY THE R2.

EXT.P7. COPY OF THE CERTIFICATE DT. 29/4/00 BY SRI. UMMINI RAGHAVAN TO THE PETITIONER'S HUSBAND.

EXT.P8. COPY OF THE CERTIFICATE DT. 29/4/00 BY SRI. K. RAGHAVAN TO PETITIONER'S HUSBAND.

EXT.P9. COPY OF THE REPLY AFFIDAVIT DT. 19/7/04 FILED BY THE PETITIONER IN OP NO. 11264/03.

EXT.P10. COPY OF THE ORDER DT. 1/7/99 BY GOVT.

EXT.P11. COPY OF THE JUDGMENT IN OP NO. 21180/99 DT. 8/12/99 OF THIS COURT.

EXT.P12. COPY OF THE JUDGMENT IN OP NO. 9136/99 DT. 30/11/99 OF THIS COURT.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 32678 of 2005-M.

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Dated this the 24th day of August, 2007.

J U D G M E N T

The petitioner has approached this Court on a second round inspite of the fact that by Ext.P1 judgment, the earlier orders passed by the Government were interfered with and this Court had directed the authority to pass orders in the light of the findings rendered therein. She is the widow of a late freedom fighter Sri.N.Kutty. For getting the pension the petitioner had moved an application along with certificates from Sri.K.Gopinathan, Sri.Ummini Raghavan and Sri.P.K.Bhaskaran who admittedly are prominent freedom fighters. Earlier the certificates were rejected on the ground that their certificates are not acceptable. By Ext.P1 judgment the said orders were quashed. After noticing the earlier judgments of this Court namely, judgments in OP.Nos.9136/1999, 3501/2000 and 21180/1999 wherein the certificates issued by those certifiers were accepted the learned Single Judge found that, there is absolutely no merit in Exts.P6 and P7 orders and the same are liable to be quashed. Therefore it is a case where this Court had rendered a judgment on the eligibility of the certifiers. Ultimately a direction was issued to reconsider the application in the light of the findings rendered in the judgment.

2. The application was again rejected by Exts.P2 and P3 stating the very same reasons and to support the conclusion what is attempted to be made is that the jail terms of the certifiers are different and therefore the petitioner has not proved her claim.

3. The application of the petitioner is Ext.P4 and referring to the suffering of the late husband of the petitioner it is clearly stated in the column that he was sentenced for more than six months in Kollam Cusba police station in CC.No.36/1114 ME. In Ext.P7 Sri.K.Gopinathan has certified that the late husband of the petitioner is a bonafide freedom fighter who was also imprisoned on account of his participation in the CC.36/1114 freedom movement during the period from 1114 Kanni 5 to 1114 Meenam 10 in Kollam Cusba police station. Sri.K.Gopinathan had also suffered actual imprisonment for more than two years and was lodged in Thiruvananthapuram Central Jail and Kollam Cusba police station for the very same case. Ext.P8 also certifies the above fact. Both these certifiers are recipients of Central Freedom Fighters pension.

4. In the counter-affidavit what is attempted to be made is that the jail terms of the certifiers and the petitioner's husband do not tally and with reference to the relevant periods it is averred that the place of imprisonment of the petitioner's late husband and the place of imprisonment of the certifiers are entirely different and hence the application is rejected.

5. The petitioner has filed a reply-affidavit producing Exts.P10, P11 and P12 which show the eligibility of the certifiers. Ext.P10 is the communication from the State Government to the Central Government whereby the application of another freedom fighter supported by the co-prisoner certificates from Sri.K.Gopinathan and Sri.Ummini Raghavan was forwarded recommending for grant of the pension. Ext.P11 is a judgment in OP.No.21180 of 1999 which was relied upon in Ext.P1 judgment to hold that the certifier is eligible. Therein the period of imprisonment of Sri.K.Gopinathan is available and the same tallies with the claim of the petitioner. The certificate of Sri.Ummini Raghavan is also referred to in that judgment for acceptance. Ext.P13 is another judgment whereby the certificate of Sri.P.K.Bhaskaran was accepted who is also a certifier here. Reliance was also made in the judgment of this Court in OP.Nos.3501/2000, 4377/2000 and 19348/2000 wherein the certificates of Sri.Gopinathan, Sri.P.K.Bhaskaran and Sri.Ummini Raghavan were found acceptable.

6. In the light of this fact the stand taken in the counter-affidavit cannot be justified. Apart from that this Court in the earlier judgment in Ext.P1 had clearly found that those certificates are acceptable and the orders then issued rejecting the application were interfered with on that ground after relying upon the judgment of this Court in OP.Nos.21180/1999, 9136/1999 and 3501/2000. Therefore this Court had taken the view that the

certifiers are eligible and it is not disputed also that they are recipients of pension under the State and the Central schemes. As the said judgment has become final the respondents cannot take up other contentions which were not urged before this Court during the pendency of the earlier writ petition. For all these reasons Exts.P2 and P3 are quashed. It is declared that the petitioner is eligible for pension under the Kerala Freedom Fighters Pension Rules. There will be a direction to the first and second respondents to pass appropriate orders sanctioning the pension from the date of Ext.P1. Appropriate orders shall be passed within a period of six weeks from the date of receipt of a copy of this judgment and the arrears shall be disbursed within the three months thereafter.

The writ petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-